IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 24 OF 2001

1. Rama Chandu Kale]
Age 48 years, Occ: Agri.]
2. Vishwanath Rama Kale]
Age 21 years, Occ: Agri.]
3. Sanjay Rama Kale]
Age 24 years, Occ: Agri.]..Appellants
All R/o. Hotgi, Tal: South](Ori. Accused
Solapur, District : Solapur]Nos. 1 to 3)

versus

The State of Maharashtra]..Respondent

Mr. B. R. Patil, for the Appellants - Original Accused Nos. 1, 2 and 3.

Mr. P. S. Hingorani, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. M. KANADE, JJ.

DATE : 20TH APRIL, 2006

ORAL JUDGMENT (PER D. G. DESHPANDE, J.) :

(Pronounced in Chamber)

1. This Appeal is filed by all the three accused against their conviction. All of them were initially charged for offences under Section 302 read with 34 of IPC but accused No.1 Rama was acquitted of the

offence under Section 302. He along with accused Nos. 2 and 3 came to be convicted under Section 324 read with 34 of IPC and they were sentenced to R.I. for one year and fine of Rs.10,000/- in default R.I. for three months. Out of the three accused, accused No.2 Vishwanath and accused No.3 Sanjay were convicted under Section 302 read with 34 of IPC and sentenced to imprisonment for life. Hence, this Appeal.

2. Name of the victim who was murdered in this matter is Ambadas. Deceased Ambadas was living along with his family members at his vasti, which was in the land within the revenue limits of Hotgi, Taluka South Solapur. At the time of the incident he was living with his son P.W. 12, two daughters Dhanubai, Gangubai and wife Sugalabai. Deceased Ambadas had three brothers, Rama Kale, Pralhad Kale and Vijay Kale, Pralhad Kale resides at Bombay, Rama Kale was serving in a factory while Vijay died on account of ill health prior to the incident. The incident took place on 22nd August 1999.

3. All the accused are related to Ambadas, accused No.1 is the cousin brother of deceased Ambadas and

accused Nos. 2 and 3 are sons of accused No.1. All three of them were residing in their own Vasti in the revenue limits of Village Hotgi i.e. in the land Gat No. 488. The Vasti of accused is at the distance from Vasti of Ambadas. The distance in this case plays vital and important role.

4. According to the prosecution, the relation between accused No.1 Rama and deceased Ambadas were strained for four reasons. Firstly, Ambadas was suspecting accused No.1 was having illicit relations with his wife Nirmala, secondly, accused No.3 Sanjay had kidnapped Chanda - daughter of Ambadas at Bombay, and, thirdly, that prior to the incident, Ambadas filed a complaint against Rama and others, and, fourthly, on the ground that P.W. 6 brother of Ambadas had advanced a loan of Rs.50,000/- to Hiragappa Landage - a neighbour P.W. 10. The said amount was received by Rama from Bombay and handed over to Hiragappa Landage, Rama was insisting that document in respect of the said amount to be in his own name and deceased Ambadas was opposing this.

5. The incident took place on 22.8.1999. All the family members of Ambadas were at their house in

their own Vasti. After their meals, according to the prosecution deceased Ambadas went to the Vasti of accused Rama, why and for what reason he went there, is not explained by the prosecution and any witnesses. After 15 -20 minutes the remaining members of the family of Ambadas heard his shouts, therefore Ashok took axe in his hand, he was accompanied by his sisters and mother. All of them went to Vasti of Rama where they found Ambadas lying on the ground, then the assault took place. Ambadas is alleged to have been hit by big stone on the head and he died on the spot. Axe in the hand of Ashok was snatched by one of the accused and by but of the axe two blows were given on the hand or arm of the witness Ashok. Thereafter, Ashok went to out post Hotgi, from there he was sent to police station. A report was lodged and then investigation was made.

6. PSI Kadam attached to the Police Station Valsang recorded FIR at 0.40 hours on 23.8.1999 and registered offence. He went to the spot of incident, held inquest, sent the body for post mortem to Civil Hospital, Solapur, prepared panchnama of the place of incident, collected incriminating articles. Then Ashok was sent to Civil Hospital for treatment.

Further investigation was carried out. Post mortem was conducted by P.W. 7 Dr. Ajay Keoliya on 23.8.1999 and the cause of death was recorded by the said doctor as "death due to injury over head, face and neck with multiple fractures of facial bones associated with intracranial haemorrhage". Ashok was examined by P.W. 11 Dr. Bhishamcharya Godbole. Accused came to be arrested only on 29.8.1999, their arrest panchnama were prepared, clothes from the persons of the accused were attached, blood samples of the accused were collected.

7. On 3.9.1999 accused No.1 Rama made a disclosure statement and pursuant thereto produced axe and stick. The same were seized under panchanama and all the recovered articles were sent to C.A. C.A. report was received and then charge sheet was filed.

8. Prosecution examined 17 witnesses to prove the guilt of the accused. The defence of the accused was of total denial but the trial Judge accepted the prosecution case and convicted the accused, as stated above, hence this Appeal.

9. Counsel for the accused, firstly, submitted that

all the witnesses were sons, daughters and wife of the deceased Ambadas, therefore they were highly interested. Secondly, there was enmity between the parties and therefore strong motive for the witnesses to falsely implicate the accused. Thirdly, from the circumstances brought on record the witnesses could not have been present at the time of the so-called murder and therefore they are concocted and got up witnesses only on suspicion and because of previous enmity to falsely implicate the accused. He also contended that contention of all the witnesses that there was electric light in the Vasti of accused Rama, is falsified by their own admission, and, evidence and if the entire story of identification depends on availability of electric light then that story has to be rejected because there were no lights in the Vasti or at the house of Rama at the relevant time. Secondly, so far as injury on the persons of Ashok is concerned, they were minor injuries and the doctor who examined Ashok opined that those injuries can be possible by fall, and therefore, Ashok with the help of police, succeeded in getting those injuries to substantiate that he was an eye witness. Next, according to the counsel for the accused the important eye witnesses have admitted in their

evidence that before they reached the out post, accused were present there and if the accused had really murdered Ambadas, there was no reason for them to go to the out post. Learned counsel for the accused severally criticised the FIR on the ground that if according to the witness Ashok and his sister they had gone to out post for reporting the incident, then real FIR was not coming before the court and were coming in the form of FIR, was bogus and concocted document. He also pointed out that if such a horrible incident has taken place before Ashok, then he would not have given such a detailed FIR. Further it was contended by him that apart from the evidence of so-called witnesses, there was no incriminating circumstance against the accused and the recovery at the instance of the accused, was of no consequence. He also argued that it was impossible that accused would have kept the same clothes on their persons after 8 days of the incident i.e. at the time of their arrest. According to him therefore, the entire appreciation of the evidence by the trial court, is totally wrong and the accused are entitled for acquittal.

10. On the other hand, the learned APP contended that

even though there was enmity between the parties and the eye witnesses are closely related to the deceased, there was no reason to disbelieve them on those grounds. APP further contended that eye witnesses were natural witnesses and the presence of injury on the person of Ashok, clearly prove that he was present at the spot and was assaulted by the accused. Learned APP also contended that there was nothing improper or unnatural in the evidence of the witnesses and there was sufficient evidence to prove that there was light at the time of the incident in the house of Rama. He also contended that there was strong motive to kill Ambadas because of enmity and because of the illicit relation of accused No.1 with wife of Ambadas. Therefore, according to him, the judgment of conviction was proper and no interference was called for.

11. In view of the submissions of both the sides, it is necessary to see the evidence of important eye witnesses first, before going through the other aspects of the matter, there is no doubt that prosecution has proved beyond reasonable doubt that Ambadas died as a result of homicidal death, and there was no challenge to that aspect by the Counsel

for the accused, before us. The question is whether prosecution succeeds in proving that the accused were responsible for his murder.

12. So far as place of the murder is concerned, there is no dispute. As per the spot panchnama Exhibit 17 Ambadas was killed in the field Survey No. 448 or by Accused Rama in front of his house. Panchnama further shows that there is open agricultural land so also to the West 30 ft. away from the house of Rama. There was a house of Shamrao Landge. Then there is a house of one Shivaji Kale. Regarding the distance P.W. 6 Pralhad Kale - brother of Ambadas has stated in his cross-examination that the distance of Vasti of Ambadas and accused Rama is about approximately 1600 ft. He denied the suggestion that there is a distance of about four and half kilometres between Vasti of Ambadas and that of Rama. He stated that the distance between Vasti of the accused and Hirappa Landage was 6 to 7 thousand feet. He also stated that Vasti of Ambadas was 2 kms away from Hotagi.

13. The first eye witness examined by the prosecution is P.W. 8 Parubai Ambadas Kale - daughter of deceased Ambadas, she was 16 years of age at the time

of evidence and she has stated that one may require half an hour to reach from Vasti of Ambadas to Vasti of Accused. P.W. 10 Hilagappa Laxman Landage who was a neighbour of Ambadas in his cross examination has stated that the distance between their vasti and vasti of Rama was about more than 2 kms. Incidentally, it has to be stated that according to this witness there was no electricity at the vasti of accused Rama. Ashok P.W. 12 - son of deceased Ambadas and eye witness of the incident, states incidentally that one bulb was there at the vasti of Rama. About the out post Hotagi where he went first, he has stated that it is at distance of 4 to 5 kms. from Vasti of Ambadas and from there they went to Valsang Police Station. He also admitted that when they went to Hotgi out post, accused nos. 1 and 3 were already present there and then both of them were taken to Valsang Police Station by jeep. From the record of the case, it appears that the Trial Court was requested to visit both the Vastis of Rama and Ambadas to take distance. The Trial Judge has given his opinion about distance is about 1200 to 1500 ft. approximately.

14. Out of the 17 witnesses, P.W. 8 and P.W. 12 are

the only eye witnesses. P.W. 8 was 16 years old girl when she gave evidence in Court and P.W. 12 was 32 years old. After giving history of enmity between both the sides, P.W. 8 has stated that incident took place one year back at about 10.30 p.m. approximately. She was in her Vasti along with her father. Apart from her sister, her brother Ashok and his wife were there in the house. Amabadas had gone to Vasti of Rama, and, then Ambadas raised shouts, therefore herself, her sister and brother Ashok went towards Vasti of Rama, Ashok took axe in his hand and she saw that Ambadas was lying on the ground. Accused Rama, Vishwanath and Sanjay were there. Rama had informed Ashok that dispute was between accused and Ambadas and therefore he should not come in between them. Accused Rama snatched the axe from the hands of Ashok and gave one blow of axe on his hand with the blunt side of the axe. Ashok fell down. Then accused went towards the father, Vishwanath then threw stone on the face of the father, Sanjay also gave another blow with the same stone on the face of the father, and then Rama threatened them and therefore they returned to their Vasti. She has stated that they saw this incident in a light at the vasti of Rama.

15. P.W. 12 Ashok has stated that on the day of the incident, he was at his vasti with his sisters and wife. They had taken their meals, they were intending to go for sleep. At that time he heard the shouts raised by his father from the vasti of accused Rama, he then took one axe and along with sister and wife went towards Vasti. He saw his father was lying on the ground.

16. Thereafter, P.W. 12 has stated that all the accused were there. Rama then started abusing him, snatched the axe from the hand of Ashok and then gave one blow on a left arm with handle of axe. Rama's two sons gave blow on his head with stick. Sanjay and Vishwanath bet him and he fell down. Then all the three went towards the father. Vishwanath accused No.2 then took stone and hit on the head of the father. Accused No.3 Sanjay took the same stone and again hit on the head of the father, then the accused left. He further stated that he went to the Police Station i.e. he came to Hotgi Out Post made report about the incident, and then went to Valsang Police Station and accordingly made report in the Police Station. That report is at Exhibit 34.

17. It will be clear from the evidence of the two so-called eye witnesses that according to them they had seen the entire incident. The trial court believed their evidence for convicting the accused. However, as rightly argued by the counsel for the accused, following strong suspicious circumstances are there, in their evidence:

(1) Both the witnesses Ashok and his sister nowhere says why Ambadas the deceased went to Vasti of the accused. Admittedly, there was strong enmity between the accused and Ambadas and as such Ambadaas old man of about 60 years going to Vasti of accused alone without taking anybody and no apparent reason is there. The very strong suspicious circumstance not explained by the prosecution or these two witnesses.

(2) Secondly, according to both these witnesses after Ambadas left they heard the shouts after 15 minutes. Now, we have already noted the various distances given between the Vasti of Ambadas and accused ranging

from 2 kms. to 1600 ft. According to the trial Judge the distance was between 1200 to 1500 ft., the Judge has not measured the distance actually, therefore considering all the evidence about the distance that has come on record it can be presumed that it was more than 1800 ft. to 2000 ft. It is difficult to believe that shouts of Ambadas could be heard by this witnesses from such a long distance even if it was night time.

(3) The third strong circumstance is positive assertion by these two witnesses that they saw this incident in the light coming from the house of Rama, the evidence in this regard is otherwise. It has specifically come on record that at the relevant time there was no light in the house of Rama and no electric supply . He has noticed that he did not see electric facility there. Therefore, this theory that these two witnesses could see the assailants in the light, stands falsified or is highly suspicious.

(4) According to these two eye witnesses, and particularly, according to Ashok immediately after incident he went to Out Post Hotgi, the accused were already there. This is a very strong circumstance going against the prosecution but not at all considered by the trial court in its proper perspective. After this brutal assault, there was no reason for the accused to go to the police station, their clothes would have been blood stained and they could have been nabbed then and there only and required to explain the presence of those blood stains.

(5) The FIR that is sought to be proved by Ashok, cannot be considered as FIR in this case. This FIR Exhibit 34 was recorded by PSI Kadam at Valsang Police Station. For reasons best known to the prosecution, the said PSI Kadam has not been examined. If according to Ashok and her sister they had gone to Hotgi Out Post, then they must have disclosed the entire incident to the police available there and that should have come as a FIR. Police were required to take down

the said information as it related to cognizable offence or make its entries in the station dairy, but none of the said documents have been tendered and no explanation whatsoever is given by the prosecution as to who was present at Out Post Hotgi and how information was received by him and whether the said Police Officer whoever he may be, reduced it into writing, if not, why not.

(6) The incident has occurred on 22.8.1999. When Ashok went to Hotgi Out Post accused were already there. If Ashok narrated the incident in presence of the accused, then it was very easy for the police officers to arrest the accused then and there. But the accused are arrested on 29.8.1999. This is a very strong circumstance creating doubt about the veracity of the prosecution case. If evidence of Ashok is accepted that he goes to Hotgi Out Post, report to the police about murder of his father, the accused are there, Ashok must have disclosed the names of the assailants and in that case there was

no reason for the police to allow the accused to go away. Information given by Ashok was sufficient to arrest the accused. But there is no explanation coming from any one as to on what count accused were allowed to go from Hotgi Outpost or Valsang Police Station where they were taken, and, then arrested on 29.8.1999.

(7) Further suspicious circumstance is the minor injuries which the Ashok is alleged to have received because he was assaulted by but of the axe. The doctor who examined Ashok had stated that these injuries could be possible by fall.

(8) Next circumstance is that even according to both the witnesses Ashok and his sister, Ambadas had gone unarmed to the Vasti of accused atleast neither Ashok or his sister said that he carried any weapon with him and when after they heard the shouts, they reached there by 15-20 minutes. If all the three accused wanted to kill Ambadas then they were not required to wait for arrival

of these two witnesses. Ambadas died as a result of multiple injuries by throwing stone on his face and that was a matter of minutes.

18. For all these reasons above story given by P.W. 12 Ashok and his sister P.W. 8 about going to the spot, witnessing the entire incident and Ashok receiving injuries, appears to be totally bogus, concocted and false story. No doubt that Ambadas had been killed and murdered, but the witnesses Ashok and his sister are not at all trustworthy. The aforesaid suspicion in their evidence could not be wiped out by the prosecution at all. It is clear that the story of receiving injury in that incident as narrated by Ashok is a concocted story and the injuries, looking to the nature of injuries, it is possible that the story was created only to show the presence of Ashok as witness to the incident, and most important is why the prosecution did not examine any constable from Hotgi Out Post or PSI Kadam, who registered the FIR.

19. It may be that there was a strong enmity between the accused and Ambadas. It is true that Ambadas was murdered. But the story of the prosecution that

Ashok and his sister were eye witnesses, is totally bogus and false story, for the suspicious circumstances mentioned above.

20. In fact, these two witnesses and Ambadas are relatives. They are known to each other by their names, by their gestures, by their appearance and there was no necessity to introduce the theory of existence of electric light in order to identify them because it is a known fact that even in the dark such closely associated persons can be identified. But these two witnesses Ashok and his sister are very specific that they identified the accused because of electric light in the house of Rama, which is falsified by the other witnesses.

21. If the evidence of eye witnesses go away, then there is no hesitation to hold that their evidence is full of suspicion and the same is liable to be rejected, then nothing remains against the accused. The recovery of blood stain clothes is also a highly suspicious thing because if accused has put on those clothes at the time of the incident and they were immediately present in the police station, as stated above, then their clothes should have been taken

charge at that time and moment. There was no reason for the police to allow the accused to go away or flee away on the basis of serious allegation of murder being made by Ashok in the very presence of those accused. But not explaining as to why the accused were allowed to go and arrested on 29.8.1999 then recovery of blood stain clothes is a fabrication by the prosecution and investigating agency.

22. It is therefore a case where the police have tried to implicate the accused only on the basis of their previous enmity. Evidence created in the form of two eye witnesses and recovery of clothes etc. is all bogus and concocted story and therefore the entire story of the prosecution is liable to be thrown. Subsequent theory of recovery of stick and axe is also of no consequence. Because if the investigation is found to be faulty and suspicious then this piece of evidence is got up and has to be rejected.

23. The trial Judge lost sight of these important aspects. He went on accepting the prosecution case without considering the aforesaid suspicious circumstances.

24. So far as actual incident is concerned, according to Ashok and his sister accused Vishwanath had thrown about 20 kgs. of stone on the head of Ambadas and then accused Sanjay did the same thing. In fact, Ashok was armed with axe. It is surprising that he allowed his axe to be snatched by the accused very easily. He does not say that he tried to prevent the accused from assaulting his father and then if Vishwanath had thrown that heavy stone of 20 kgs. on the head of Ambadas then there was no necessity for Sanjay to repeat the act again because that one hit by the stone of 20 kgs. was itself sufficient to crush and smash the head of Ambadas. Therefore the role attributed to Sanjay is clearly out of enmity.

25. According to Ashok and his sister when they went they saw Ambadas lying on the ground. If that was so then considering the enmity and the fact that Ashok had axe with him he should have immediately retaliated by launching an aggression upon the accused. He did nothing of that sort. At least his evidence do not show so and he allowed the axe to be snatched. Therefore, all the story put forth by these two witnesses is full of suspicion and as a

result the case of the prosecution has to be totally discarded. In the result, we have to allow this appeal. Hence, order:

ORDER

. Appeal is allowed.

. Accused are acquitted of all the offences charged against them. If the accused are in custody they should be released forthwith, if not required in any other case. If they are on bail, their bail bonds shall stand cancelled.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)